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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934. No. 431

PENN GENERAL CASUALTY COMPANY,
Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA, ex rel.

WM. A. SCHNADER, *Attorney General*

BRIEF FOR RESPONDENT

On Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania

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BRIEF FOR RESPONDENT

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STATUTES INVOLVED

In addition to the Pennsylvania statutes referred to by the petitioner on page 2 of its brief, namely, The Insurance Department Act of 1921 and The Insurance Company Law of 1921, reference is also made to provisions of The Administrative Code of 1929, approved April 9, 1929, P. L. 177. Sections 1501 and 1502 thereof, and likewise sections of the other two Pennsylvania acts, are printed in the appendix to this brief, beginning at page 53.

ADDITIONS TO PETITIONER'S STATEMENT OF THE CASE

Penn General Casualty Company was chartered by the Governor of Pennsylvania on December 26, 1923, under the provisions of "The Insurance Company Law of 1921." Pursuant to its purpose the company conducted a general casualty insurance business under the supervision of the Insurance Commissioner of Pennsylvania (R. 5).

Early in September, 1933, the Commissioner received information to the effect that the company's assets had been seriously depleted. At once he made an examination of the company's affairs. While this examination was in process the Commissioner cited the company's officers and directors to a hearing (R. 6).

On September 14, 1933, at the hearing held at Harrisburg it was established that C. B. Love, then the company's President, had improperly removed assets of the company and made illegal investments for the company. He was ordered to make immediate restitution (R. 6).

On October 4, 1933, the examination of the company's affairs was concluded. Thereupon the company's officers and directors were summoned to a formal hearing before the Attorney General because the Insurance Commissioner felt, as a result of the examination, that the company was in an unsafe and unsound condition (R. 6).

On October 14, 1933, at the hearing, it was established that the further transaction of business by the company would be hazardous to its policyholders, its creditors and the public (R. 27).

However, the Commissioner undertook to assist the company in an effort to rehabilitate its affairs and place it in a position to resume business. Negotiations were conducted with shareholders of the company holding approximately ninety-five per centum of its capital stock. From time to time officers and directors of the company met with the Insurance Commissioner pursuant to the intention of all parties to do everything possible to save the company (R. 6, 27).

While these negotiations were in progress, Samuel Lando, claiming to hold four shares of the company's capital stock and to reside in West Virginia, on November 17, 1933, filed with the District Court of the United States for the Eastern District of Pennsylvania, a bill in equity asking for the appointment of receivers. A copy of the bill and a citation from the district court, were served on the company on November 22, 1933 (R. 6, 9).

Meantime, efforts of the Insurance Commissioner, in conjunction with shareholders, to rehabilitate the company's affairs and permit it to resume business had been carried on; but eventually they proved fruitless.

Accordingly, on December 8, 1933, the Attorney General proceeded, according to Pennsylvania law, by filing with the Court of Common Pleas of Dauphin

County a suggestion asking for a rule on the company to show cause why it should not be dissolved, its charter vacated, and its affairs liquidated by the Insurance Commissioner, and for an injunction to restrain the company from transacting business and disposing of its assets (R. 8, 9).

On the same date, the State court entered an order to show cause containing the preliminary injunction requested by the Commonwealth. On December 11, 1933, the suggestion and order were served on the company (R. 9).

On December 14, 1933, the State court issued an additional order restraining defendant from the further conduct of business and from disposing of or in any way dealing with its property or assets (R. 9, 10).

On December 14, 1933, the company filed its answer to the bill in the Federal court. It denied that the complainant was the registered owner of four shares of stock but admitted there had been improper withdrawal of assets and illegal investments. It denied that the present management was improper and averred that the offending parties had no longer control of the company's affairs. It also averred the pendency of the proceedings in the state court (R. 9).

On December 15, 1933, the Federal court issued a restraining order enjoining all parties from "interfering in any way with the present possession of the books, papers, records and assets, and business" of the company (R. 18). Thereafter the Federal court

took no further action in the Lando proceeding (R. 12).

On January 17, 1934, hearing was held in the State court and testimony taken in support of the Commonwealth's contentions. No testimony was offered by the company (R. 12).

On March 14, 1934, a final decree was entered by the State court dissolving the company, vacating its charter and appointing the Insurance Commissioner liquidator of the business and property of the company (R. 12, 13).

QUESTIONS PRESENTED

1. When the Attorney General of a state which has established a complete system for the incorporation, supervision, regulation and liquidation of its insurance companies, applies to a state court for an order dissolving such a company and providing for its liquidation by the insurance commissioner, as contemplated by the state's law, is the state court debarred from acting because of the pendency in a Federal court of a receivership proceeding, instituted by a shareholder not of record, prior to the state court proceeding?

2. Has a Federal court jurisdiction on the bill of a nonregistered shareholder to appoint receivers to liquidate a quasi-public corporation,—an insurance company,—when the state law provides a complete system for the organization, regulation, supervision and liquidation of such corporations, and does not per-

mit a shareholder to maintain a suit in the state courts for the appointment of any person as receiver to liquidate the affairs of such corporations, other than the state administrative official who supervises and regulates them?

3. If a Federal court has such jurisdiction, does the issuance of its order restraining all persons from interfering with the books, papers, records and assets of the insurance company preclude the state administrative officer from taking possession of and liquidating the business of the company pursuant to the decree of the state court made in consonance with state law?

ARGUMENT

SUMMARY

A member or shareholder of a quasi-public corporation,—a bank, an insurance company, or a building and loan association,—is bound by the provisions of the state law governing the organization, regulation, supervision and liquidation of such corporation.

If the state law provides for liquidation exclusively through the state supervisory official, the member or shareholder must be regarded in law as having accepted that provision as a part of his contract.

Under such circumstances the member or shareholder has no standing to maintain a bill in equity in a Federal court praying the appointment of receivers to liquidate the corporation. He cannot have a con-

troversy with the corporation on this subject; and even though he be a citizen of another state, there is no controversy between citizens of different states.

Diversity of citizenship is not of itself a controversy; and unless there is a controversy, diversity of citizenship does not confer jurisdiction on the Federal courts.

But even if jurisdiction did exist in the Federal court, it should not have attempted to exercise it in this case, even to the extent of issuing a restraining order because

1. In pursuance of the state policy of having insurance companies liquidated exclusively by the Insurance Commissioner, the Attorney General prior to the date of the restraining order, had proceeded according to state law to secure the appointment of the Insurance Commissioner as statutory liquidator of the insurance company;

2. Prior to the filing of the bill in the Federal court, the Insurance Commissioner had taken charge of the affairs of the company and was making every effort to rehabilitate it and place it in a position to resume business, pending his determination of the question whether, failing such rehabilitation, he should liquidate its affairs.

3. There was no charge of fraud, mismanagement, or improper conduct of any kind on the part of the Insurance Commissioner in supervising the company; and

4. The Federal courts, as a matter of comity, should not lend themselves to the subversion of a state's policy in the management and liquidation of quasi-public corporations upon the mere assertion of diversity of citizenship and the necessity for liquidation.

And even if the Federal court did not abuse its discretion in issuing its restraining order one day after the state court under state law had issued its order restraining the company from the further conduct of business and from disposing of its property, the Federal court should have rescinded its order following final action by the state court. To this extent, at least, the Federal court should sustain a state's policy in assuring shareholders of its quasi-public corporations, that liquidation, if it becomes necessary, will be in charge of the state's administrative officer charged with the duty of supervising, regulating, and liquidating such corporations.

Once the state court had declared the defendant company in such condition that its further transaction of business would be hazardous to its policyholders, its creditors, and the public, and had directed the Insurance Commissioner, as statutory liquidator, to take possession of the business and property of the company and liquidate its affairs, and had dissolved the corporate existence of the company, the Federal court should have rescinded its restraining order and permitted the state officer to function without any attempt at hindrance.

I.

The State Law Provides In Effect an Exclusive Method for Liquidating Insurance Companies; and These Proceedings were Instituted in Accordance with that Law.

Speaking for the Supreme Court of Pennsylvania, Mr. Justice Schaffer thus construed the State law regulating the liquidation of insurance companies (R. 30):

> "* * * Under the system of supervisory regulation over insurance companies established by the laws of Pennsylvania there cannot be a controversy in the State courts between a stockholder and an insurance company regarding the liquidation thereof. **The power to liquidate insurance companies rests solely in the Insurance Commissioner.** A citizen of Pennsylvania cannot, by bringing a bill in equity in a Pennsylvania court against a Pennsylvania insurance company, prevent the Insurance Commissioner from liquidating * * *."

The petitioner contends (Brief for Petitioner, p. 26) that the State law "does not even attempt to provide that the sole and exclusive method of winding up an insurance company shall be that prescribed by Section 502 of the Insurance Department Act of 1921."

But the Supreme Court of Pennsylvania has construed the statute against the Petitioner's contention; and, it is unnecessary to cite authorities for the proposition that this Court will accept the construction given

to the state's statutes by the state's highest appellate court.

And this construction is clearly warranted by the language of Sections 501 to 510, inclusive, of the Insurance Department Act of 1921 (Appendix, pp. 67 to 75).

There is no contention by the petitioner that the proceeding instituted in the state court and carried to completion in that court under state law was in any sense irregular or improper. The petitioner argues that because of the prior pendency of the receivership proceeding in the Federal court, the state court, having only concurrent jurisdiction, did not have any jurisdiction at all; the Attorney General's suggestion was filed after the bill in equity had been filed in the Federal court.

At this point we wish to correct a statement appearing in the restraining order of the Federal court (R. 11). The order states that previous application for the restraining order had been "continued at the request of all parties in interest, including the Deputy Attorney General of the State of Pennsylvania." There was no basis of fact for this statement. At no time has the Commonwealth, its Attorney General, or its Insurance Commissioner, or any representative or deputy acting for any of them, been a party to the Federal proceeding or to any agreement incident thereto or connected therewith.

II.

The District Court Did Not Have Jurisdiction to Appoint Receivers to Liquidate the Company.

Congress has given expression to the policy that shareholders and creditors of insurance companies shall not be subjected to the liquidation of their affairs by Federal courts at the instance of disgruntled shareholders.

Quasi-public corporations, such as insurance companies, banks, trust companies, and building and loan associations, are not subject to the bankruptcy laws (Act of April 11, 1932, c. 38, 47 Stat. 47). A district court cannot appoint receivers in bankruptcy for an insurance company and thereafer wind up its affairs. We submit that a district court may not effect the same result by means of an equity receivership proceeding.

The proceedings instituted in the Federal court by bill in equity are tantamount to bankruptcy proceedings. The bill alleged insolvency and prayed that receivers be appointed to liquidate the company, not merely continue its business.

The complainant was not seeking merely a "nursing receivership"; in effect he was seeking to institute a bankruptcy proceeding.

There is no legislative authority in a district court to appoint a receiver to liquidate a quasi-public corporation of Pennsylvania.

The Act of Congress (R. S. Sections 563, 629; 28 USCA Section 41, (1)) provides that:

> "The district courts shall have original jurisdiction as follows:
>
> "First. Of all suits of a civil nature, at common law or in equity, * * * where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3000, and * * * is between citizens of different States * * *."

Under the system established by Pennsylvania law there cannot be a justiciable controversy between a shareholder and an insurance company involving the appointment of receivers to liquidate the company. If a citizen of Pennsylvania sought by bill in equity in a Pennsylvania court to secure the appointment of receivers to liquidate a Pennsylvania insurance company, the court would appoint only the Insurance Commissioner. If it appointed another, the Insurance Commissioner could immediately succeed him. There would be no justiciable controversy to support a bill seeking the appointment of any person other than the Commissioner.

Therefore, if the district courts of the United States have jurisdiction in cases such as that now before the court, a citizen of another state would have rights superior to those of citizens of Pennsylvania.

Diversity of citizenship must, in such event, be held to create a controversy, which, but for diversity of citizenship, could not exist.

To state the matter differently, the court would not be taking jurisdiction of controversies between citizens of different states but would be creating controversies between such citizens.

For the purposes of this case, it is not necessary to determine whether receivers can ever be appointed for insurance companies. Possibly allegations of fraud or mismanagement or maladministration might warrant the appointment of receivers, but receivers cannot be appointed for such companies for the express purpose of liquidating them.

It is true that Section 507 of the Insurance Department Act of 1921 (Appendix, p. 72) recognizes the possibility that receivers may be appointed by State courts; but there is no recognition there of the right to appoint receivers **to liquidate** a company. The preceding sections of the statute make it clear that liquidation is the function of the Insurance Commissioner, exclusively. And the Supreme Court of Pennsylvania has so construed them.

In addition to the requirement that there be a controversy, the Judicial Code, as quoted, confers jurisdiction only over suits "of a civil nature, at common law or in equity." This provision has been construed as conferring jurisdiction in equity only where it can be supported by the principles of the High Court of Chancery in England, existing at the time of the adoption of our Constitution.

In Loring v. Marsh Et Al., Fed. Cas. No. 8515 (C. C., Dist. Mass., 1865) Judge Clifford said, at 15 Fed. Cas. 905, 914:

> "* * * The courts of the United States cannot exercise any equity powers, except such as are conferred by an act of congress, and those judicial powers which the high court of chancery in England under its judicial capacity, as a court of equity, possessed and exercised at the time of the formation of the constitution of the United States. * * * The supreme court hold that the prerogative power belonging to the sovereign, has not been delegated to the federal government, but remains in the several states, and is to be exercised according to the laws and usages prevailing in the several states * * *"

We have been unable to find any case in which the High Court of Chancery assumed jurisdiction to liquidate a quasi-public corporation.

That being the case, the section of the Judicial Code to which we have referred cannot be construed as conferring upon district courts jurisdiction in equity to liquidate quasi-public corporations and especially quasi-public corporations of sovereignties other than the United States Government. And there is no other Federal statute which could be construed to effect that result.

It is, of course, true that state legislation cannot limit or control the jurisdiction of the Federal courts in cases in which they have heretofore been accustomed to exercise jurisdiction. But state laws may in effect bar an individual from resort to a Federal court

by denying him a right of action against a quasi-public institution of which he is a member or shareholder. The Federal courts have recognized this distinction.

In McGarry v. Lentz, 13 F. (2d) 51 (1926), the Circuit Court of Appeals for the Sixth Circuit affirmed the District Court in its refusal to appoint receivers for an Ohio fraternal benefit society on application of several of its members. The Ohio General Code contemplated the complete regulation of domestic fraternal benefit societies and insurance companies by state officers. The court held that this precluded any member of a society organized under such laws from resorting to a Federal court for relief not contemplated by the state statute. Judge Hickenlooper said, at page 52:

> "* * * Obviously, no state Legislature can regulate, limit, or control the jurisdiction of the federal courts, nor can the laws of any state preclude resort to the federal courts, nor confer exclusive jurisdiction upon a designated state court, in a class of cases of which the federal courts of equity have theretofore been accustomed to assume jurisdiction. * * *"

But at page 53:

> "* * * While the question is sometimes loosely referred to as one involving the jurisdiction of the court over the subject-matter of the litigation, the purpose, scope, and effect of section 9487 of the General Code of Ohio, and similar provisions in other states, are those of the limitation of the rights of members and policy holders, rather than a restriction upon the jurisdiction of courts of equity.

> "In the present case the very contract, which created whatever rights the complainants may have, limited and defined those rights, so as to exclude the remedy now asserted. The question, therefore, is not whether the complainant's are by statute precluded from asserting in this court a right given them by law, but rather whether the right was ever existent. The complainants have no rights here which do not originate under and are not founded upon their contracts of membership and policies of insurance in the American Insurance Union. * * *"

Likewise, in COOK v. ILLINOIS BANKER'S LIFE ASS'N, 46 F. (2d) 782 (1931), the Circuit Court of Appeals for the Second Circuit upheld the District Court in dismissing a bill of complaint brought by five policyholders of an Illinois life insurance company on the ground that the complainants were without right under state law to maintain an action for an injunction and for the appointment of a receiver. The court held, citing MCGARRY v. LENTZ and other cases, that the laws of Illinois regulating its insurance companies "are a part of the charter of both the association and the company, and their enforcement is a property right of every member of the association and a charter right of the association. * * *. These provisions are valid limitations and safeguards, binding upon the corporation and its members, and will be enforced by the federal courts," (page 783).

See also HAYNES v. FRATERNAL AID UNION, 34 F. (2d) 305 (1929), where a similar statute was held by the District Court for Kansas to deny members of a Kansas fraternal society the right to resort to a Fed-

eral court for an injunction or the appointment of a receiver. By becoming members of the society the complainants "contracted away their rights" to such remedies.

RELF v. RUNDLE, 103 U. S. 222 (1881), has long been authority for the proposition that where an insurance company is dissolved under the laws of the state of its creation, the supervising official of the state becomes vested with all of its property and is actually the successor to the corporation itself.

The reasoning of the Court in that case is significant in the instant case. In holding that Relf, the Superintendent of the Insurance Department of Missouri, had a right to bring a suit in the courts of another state for the recovery of property belonging to the company, Mr. Chief Justice Waite said (page 225):

> "After the decree of dissolution the Life Association Company had no longer any corporate existence, and the temporary agency and receivership of Frost was ended when the property of the Corporation was transferred to Relf and he became under the law entitled to the possession.
>
> "Relf is not an officer of the Missouri state court, but the person designated by law to take the property of any dissolved life insurance corporation of that State, and hold and dispose of it in trust for the use and benefit of creditors, and other parties interested. **The law which clothed him with this trust was, in legal effect, part of the charter of the Corporation.** He was the statutory successor of the Corporation for the purpose of winding up its affairs. * * * He is an officer of the

State, and as such represents the State in its sovereignty while performing its public duties connected with the winding up of the affairs of one of its insolvent and dissolved corporations. His authority does not come from the decree of the court, but from the statute. He appeared in Louisiana not by virtue of any appointment from the court, but as the statutory successor of a corporation which the court had in a legitimate way dissolved and put out of existence. He was in fact, the Corporation itself for all the purposes of winding up its affairs.

"We are aware that, except by virtue of some statutory authority, an administrator appointed in one State cannot generally sue in another, and, that a receiver appointed by a state court has no extra-territorial power, but a corporation is the creature of legislation, and may be endowed with such powers as its creator sees fit to give. * * * Every corporation necessarily carries its charter wherever it goes, for that is the law of its existence. It may be restricted in the use of some of its powers while doing business away from its corporate home, but every person who deals with it everywhere is bound to take notice of the provisions which have been made in its charter for the management and control of its affairs both in life and after dissolution.

"By the charter of this Corporation, if a dissolution was decreed, its property passed by operation of law to the Superintendent of the Insurance Department of the State, and he was charged with the duty of winding up its affairs. **Every policy holder and creditor in Louisiana is charged with notice of this charter right which all interested in the affairs of the Corporation can insist shall be regarded.** * * *"

See also SOPTICH v. ST. JOSEPH NAT. CROATION BENEFICIARY ASS'N., 34 F. (2d) 566 (1926), where a member of a Kansas beneficiary association was held not entitled to maintain a suit against the association for its dissolution with incidental accounting and the appointment of a receiver, since by Kansas law, all power to bring and maintain suits of this character was withdrawn from members of the association and reposed in the Superintendent of Insurance and the Attorney General. District Judge Pollock said, page 568:

> "* * * I am impelled to this conclusion by the decisions of the Supreme Court of this state construing the statutes of the state under which defendant association was created and by which it is governed. * * *"

In the present case, the Commonwealth contends that the complainant in the district court, because he is a shareholder of the insurance company, and notwithstanding his residence beyond the confines of the Commonwealth, is bound by the laws under which the company was created and regulated. By the provisions of those laws the company could be liquidated only by the Insurance Commissioner.

There was no justiciable controversy brought to the district court by the bill in equity filed there.

III.

Even if Jurisdiction Existed It was An Abuse of Discretion for the Federal Court to Exercise It.

A reading of the portions of The Insurance Department Act of 1921 and of The Insurance Company Law

of 1921, quoted at pages 53 to 76 of this brief, renders it apparent that the Commonwealth of Pennsylvania has provided a complete system for the incorporation, supervision and liquidation of insurance companies.

Under Section 502 of The Department Act the Insurance Commissioner, under certain conditions, may, as statutory liquidator, take possession of the business and property of a Pennsylvania insurance company. Subsequent sections prescribe his powers and duties after he has taken possession.

In this case, although the Commissioner had not actually become liquidator of the insurance company prior to the filing of the bill of complaint in the Federal court, he had taken the steps described in our Additions to Petitioner's Statement of the Case, to safeguard the company's assets and to protect its policyholders, its creditors and the public.

Beginning on September 14, 1933, when the Commissioner definitely ascertained that its President had improperly removed assets of the company and made illegal investments for it and continuing throughout to the time when the suggestion of the Attorney General was filed in the Court of Common Pleas of Dauphin County, the Commissioner never ceased to exercise control over the company as authorized by Pennsylvania law.

There is no charge in the bill of complaint filed in the Federal court that the Commissioner was guilty

of neglect or delay in performing his duty. What he did in refraining from resort to the State court pending the hoped-for execution of plans to rehabilitate the company was beneficial to the policyholders, creditors and shareholders of the company. Rather than take immediate steps to liquidate the company,—which would have been disastrous to any plan to reestablish its financial position,—the Commissioner elected to delay the filing of his suggestion with the State court until it was definitely determined that a rehabilitation plan could not succeed. During this time the policyholders, creditors and shareholders of the company did not suffer any loss. The company was constantly under the supervision and control and subject to the directions of the Commissioner.

Under these circumstances, we submit that the district court should not have entertained a shareholder's bill designed to unseat the state officer. The court should have sustained Pennsylvania's statutory method of liquidation.

In STATE OF OHIO EX REL. BETTMAN, ATTORNEY GENERAL, v. COURT OF COMMON PLEAS OF FRANKLIN COUNTY ET AL., 178 N. E. 258 (1931), the Supreme Court of Ohio restrained by prohibition the appointment by an inferior court of a receiver for a building and loan association. The complainant, a creditor, alleged that the association was insolvent and requested the appointment of a receiver. The Attorney General of the State alleged that for some time prior to the suit the Superintendent of Building and Loan Associations of Ohio had been examining the association to ascertain

its true condition and determine the course to be pursued by him under the law, and that the sole purpose of the complainant and her counsel in filing the bill was to deprive the Superintendent of jurisdiction and procure the liquidation of the association by receivers.

The Supreme Court held that the court of common pleas had no authority to appoint a receiver and that the statutory method of dissolution and liquidation of building and loan associations was adequate, complete, and exclusive. The language of Matthias, J., at page 261, is particularly pertinent in this case. He said:

> "These facts are uncontroverted, and there being no charge of failure, neglect, or delay of the superintendent of building and loan associations, or of the attorney general, in the performance of their duties prescribed by law, the presumption, of course, obtains that they have been and will continue to be diligent in the performance of all the duties, and faithful in meeting all the responsibilities of their respective offices relative to the affairs of said company."

In the present case, the Insurance Commissioner, having a complete knowledge of the financial condition of the company and of the possibility of re-establishing its position in such manner as to assure its resumption of business without loss to any policyholder or creditor, was the proper person, in fact and in law, to determine what was for the best interests of such parties and the public.

In order to protect the policyholders, the creditors and the public and in turn the shareholders themselves

the Commissioner refrained from taking such action immediately as would completely and finally have rendered hopeless all plans to save the company.

While withholding the filing of his suggestion with the state court and acting faithfully according to the law of Pennsylvania, the Commissioner,—if the contention of the petitioner herein prevails,—was effectively and permanently precluded from liquidating the company, merely because a shareholder determined that regardless of the law of Pennsylvania under which it was organized and had functioned, he would unseat the Insurance Commissioner and substitute a Federal receiver.

And the district court, in the face of an answer denying the averments of the bill, and without a hearing, issued its restraining order, the purpose of which must have been to prevent the state administrative and judicial officers from functioning as required by state law.

The Commonwealth and its Insurance Department were helpless to prevent the nonresident shareholder from presenting his bill in equity to the Federal court, but that court should not have taken any affirmative action under the circumstances of the case. The bill ought to have been dismissed.

The Federal court should not have issued its restraining order in the face of the fact that the Court of Common Pleas of Dauphin County had taken juris-

diction and proceeded under Pennsylvania law as interpreted and upheld by the highest court of the state.

The question is: Should a Federal court even if it has jurisdiction, ignore the public policy of a state merely because there is a diversity of citizenship and the sum of three thousand dollars ($3,000) is involved?

There is abundant support for a negative answer.

The complainant in the Federal court asked for the appointment of receivers to liquidate the company. While the court did not appoint receivers it acted to the extent of trying to interfere with the liquidation of the company as contemplated by the state's system of handling insurance companies. By its restraining order it sought to oust the state administrative officer from the performance of his statutory functions and to oust the state court from its jurisdiction and power to dissolve the corporate existence of the company and to liquidate its affairs as prescribed by state law.

In so doing the court abused its power.

The possession of jurisdiction is not the same thing as its exercise.

As Section 7669 of FLETCHER'S CYCLOPEDIA OF CORPORATIONS expresses it:

> "The distinction between 'jurisdiction' to appoint a receiver and whether the power, if it exists, shall be exercised, must always be kept in mind. Jurisdiction of a court of equity to appoint a receiver is one thing, and whether the

court will exercise its jurisdiction is an entirely different matter. While courts hesitate to appoint a receiver, especially when the corporation is solvent, this does not mean that there is want of jurisdiction to appoint a receiver, it being well said that 'judicial hesitancy does not mean judicial atrophy or paralysis.'"

And, again in Section 7697:

"* * * The power of appointment [of receivers] is a delicate one, and to be exercised with great circumspection. Indeed, the courts have held repeatedly that **the power to appoint a receiver should be exercised with great care and the utmost caution and only in case of an emergency** * * * or * * * 'extreme necessity,' * * * and more especially is this true where the corporation is solvent, or the defendant corporation is a bank. * * * 'A receivership is not a panacea for all business ills. The remedy may be worse than the disease.' * * * 'A receivership is the most drastic remedy and the most expensive luxury known to the realm of the law.' * * *" Citing FURRER v. NEBRASKA BUILDING AND INVESTMENT COMPANY, 189 N. W. 359 [Neb.]

This language applies with particular force to insurance companies. This is especially so in view of the fact that the legislatures of many states have enacted laws giving to statutory officers rather than to the courts, the duty to liquidate these companies. The legislatures evidently had in mind the avoidance of the well-known abuses which have become so costly to creditors and stockholders in receiverships of ordinary corporations.

In his Article on "THE ABUSES OF RECEIVERSHIPS," in XIX Yale Law Journal 275 (1910), Judge Jacob Trieber of the United States District Court in Arkansas, said:

> "The appointment of a receiver and the granting of a temporary injunction, like the granting of specific performance of contracts, is not a matter of absolute right, but is within the sound discretion of the court, guided by the established principles, rules and practices in equity. One of the well established rules is that courts of equity will not grant any interlocutory relief if the injury caused the defendants by reason thereof will prove very great, while the benefits to the party applying therefor will be but small compared with the injury inflicted upon the defendant. Still, in spite of these well settled equitable principles, it is not unusual for appointments of receivers to be made upon the most flimsy allegations, and sometimes even without notice to the parties directly affected thereby. * * *"

Experience shows this to be true.

There is a real and extensive public interest involved in the state supervision and regulation of insurance companies, banks, and building and loan associations. Judges should hesitate a long while before applying to such institutions the extraordinary remedy of receivership.

In ULMER v. FALMOUTH, 93 Me. 302, 45 A. 32 (1899), the Supreme Court of Maine said (page 34):

> "'It is to be observed that these institutions possess a public character, and it is for the in-

terest of the public, not only that they shall be subjected to judicial investigation when they ought to be, but also that they shall not be so subjected when they ought not to be. Unusual means are placed in the hands of the bank examiner to ascertain their condition, and it cannot be presumed that he will fail to act in a proper case. If one shareholder may maintain a bill, so may every other. There is no limit. To subject loan and building associations to vexatious, harassing and expensive litigation caused by the suits of possibly multitudinous shareholders who may be dissatisfied, with or without reason, would greatly impair their usefulness, if not imperil their existence.'"

This language is equally appropriate in considering the extent to which private litigants should be allowed to interfere with the operation of insurance companies.

The courts should not willingly exercise power to interfere with a state system of insurance control.

In BANK OF BAY BISCAYNE ET AL., V. HANKINS ET AL., 42 Fed. (2d) 209, (C. C. A. 5th Cir. 1930), the District Court appointed a receiver to control the assets of an insolvent state bank, in place of the state comptroller of Florida acting under statutory authority. The appellate court reversed the district court's action. It remanded the case, with directions to dismiss the bill of complaint, "The mandate to issue immediately."

The court said, at page 210:

"Regardless of the terms used, it is apparent that the order in effect appoints a receiver to control the assets of the failed bank, and enjoins the

> comptroller from carrying on the liquidation of the institution under provisions of the laws of Florida. **A bank organized under the laws of a state is a quasi-public institution, and, whenever the laws of the state provide for supervision and control of the affiairs of the bank by an authorized official, and also for the ultimate liquidation and distribution of its assets under his direction, in the event of its insolvency, it is a matter of grave consequence for any court to interfere,** and that should be done only in a perfectly clear case. It does not appear from the record that such a case is presented here. The laws of Florida provide an orderly method of liquidating the affairs of an insolvent state bank, in substantially the same manner that federal statutes provide for the liquidation of an insolvent national bank. * * * It is usually a matter of discretion to issue an injunction and appoint a receiver, but the exercise of jurisdiction and the entering of the order appealed from in this case appear to us to be unwarranted."

This language also is equally apt when an insurance company, instead of a bank, is involved.

In STREET'S FEDERAL EQUITY PRACTICE, Vol. 3, Section 2528, it is said:

> "* * * the right of a federal court to appoint a receiver may sometimes be materially affected by state statutes. For instance, if a state statute creates a substantive right to have a receiver appointed, a federal court will not appoint a receiver, though upon the general principles governing its own practice a receiver would be appointed."

Not only does the Pennsylvania statute provide that

the Insurance Commissioner shall have the sole power to liquidate insurance companies, but it also gives to policyholders, creditors and shareholders a positive right to have the Insurance Commissioner substituted if a receiver should be appointed by a state court. This right should, we submit, be recognized by the Federal courts as a matter of comity.

The right conferred by the Pennsylvania law is not merely for the benefit of the policyholders, creditors and shareholders of the particular company. It is intended to benefit the people of the Commonwealth generally. It is a matter of real public importance that the affairs of insurance companies be liquidated,—when liquidation becomes necessary,—in an orderly and economical manner. And those who deal with such corporations have a right to rely upon the sanctity of the law creating and regulating them.

In MITCHELL v. LAY ET AL., 48 Fed. (2d) 79 (1930), it was held that the Insurance Commissioner of California could not be ordered by a Federal court to deliver over to its receiver funds placed in the custody of the state for the protection of the insolvent insurance company's creditors therein. The District Court judge had issued such an order, but on appeal he was reversed.

Judge Wilbur said at page 84:

> "It will be observed that this injunction prohibits the insurance commissioner from performing the duties imposed upon him by a state statute * * * which provide for the liquidation of insolvent insurance companies which have been engaged in

> business in the state of California. The constitutionality of this state statute is not disputed. The order appealed from directs that the appellant insurance commissioner violate his official duty under such statute by turning over to the receiver of the federal court a fund that was in the custody of the state through its officers for the protection of creditors of the insolvent insurance company before this action was begun. And these orders are made notwithstanding that there is no claim that the insurance commissioner has neglected his duty, but solely on the ground that he is endeavoring to perform his duty as defined in the state statute. The mere statement of this situation is sufficient to show the impropriety of the order of the court. * * *"

A petition for writ of certiorari to the Supreme Court of the United States was denied. (283 U. S. 864, 75 L. Ed. 1469 [1931]).

In AMOS, COMPTROLLER OF STATE OF FLORIDA v. TRUST COMPANY OF FLORIDA ET AL., 54 Fed. (2d) 286 (C. C. A. 5th Cir. 1931), the District Court attempted to take over a large part of a trust company's assets by a special receivership. It enjoined the state comptroller from exercising the functions imposed upon him by state law. The appellate court held such action by a District Court improper and unwarranted. The state administrative officer was compared to a liquidator appointed under the national banking act and was held to be not a court officer, but a representative of the state.

In his decision, Circuit Judge Sibley followed the decisions of the Florida courts in STATE OF FLORIDA

EX REL. DADE COUNTY SECURITY CO. v. BARNS, 128 So. 860 (1930); BANK OF BAY BISCAYNE v. HANKINS, supra; and STATE OF FLORIDA v. CIRCUIT COURT, 135 So. 866 (1931).

A petition for a writ of certiorari was denied by this Court (285 U. S. 559, 76 L. Ed. 947 [1932]).

This Court appears to have set its seal of approval on the policy of non- interference by equity courts with state systems of supervision, control and liquidation of quasi- public institutions.

Before closing our argument on this point, we feel that we should call the Court's attention to PORT NEWARK NAT. BANK OF NEWARK v. WALDRON, 46 Fed. (2d) 296 (C. C. A. 3rd Cir. 1930). In that case a district court appointed a receiver to take charge of the affairs of a national bank. The receiver appointed by the Comptroller of the Currency under the provisions of the United States statutes appealed from the decree making this appointment.

The Comptroller of the Currency holds a position with respect to national banks similar to that held by the Secretary of Banking with respect to Pennsylvania banks, trust companies and building and loan associations, and by the Insurance Commissioner to Pennsylvania insurance companies. In the PORT NEWARK CASE the Comptroller had been supervising the institution with a view to liquidation and was conferring with the bank's officers on a plan that might make such course unnecessary. On the very day of the con-

ference a stockholder presented to the district court a bill praying for a receivership. The court granted a rule to show cause why receivers should not be appointed. The following morning the Comptroller appointed a liquidator under the authority of the Revised Statutes of the United States (12 U. S. C. A. Section 191), providing that "Whenever the comptroller shall become satisfied of the insolvency of a national banking association, he may, after due examination of its affairs * * * appoint a receiver who shall proceed to close up such association."

The Circuit Court of Appeals held that (page 279):

> "* * * the authorities are clear that the appointment of receivers by the Comptroller is part of a complete federal system looking to the control of national banks, and that such receivers are not like a receiver appointed by a court, but are officers of the United States, and their possession of the bank is the possession of the United States. * * *"

The similarity of the situation to that of the case at bar is striking. The Insurance Commissioner is not like a receiver appointed by a court, although he is given by statute the powers of such a receiver. He holds and exercises those powers by virtue of his statutory office. Possession by him of an insurance company pursuant to an order of the state court in conformity with the state statue is possession by the Commonwealth of Pennsylvania.

Judge Buffington's language at page 298 of the PORT NEWARK CASE, states our situation precisely:

> "We pass over the omission to give notice to the bank of the filing of the bill and the application

for a receiver; of the failure to give bond either when the injunction ex parte restraining order of August 7th was entered, or, indeed, when the final injunction order of August 13th was made; of the effect of the filing of the bill in precipitating the closing of the bank and making impossible of performance the acceptance of Mr. Rippel's offer on behalf of the Merchants' & Newark Trust Company of taking over the bank and preventing its closing; and confine ourselves solely to the question whether the Comptroller's receiver was lawfully ousted from his possession. We are of opinion he was not. **This is not a conflict between two courts of co-ordinate jurisdiction, but is one between the judicial and the executive arm of the sovereignty.** In our view, the threatening status of this bank on August 7th and its efforts to prevent its failure necessitated the supervision and 'dominion' of the Comptroller, and, when that duty was begun by the bank examiner, the Comptroller had 'dominion' over the bank's affairs, and so continued until the efforts to prevent closing the bank were defeated by the filing of this bill. When this happened, it became the duty of the Comptroller, who, as his order stated, 'had information on file in this bureau that the bank is insolvent,' to appoint a receiver and close the bank. The wisdom of his so doing prevented a run and a depletion of the bank's assets. For it will be observed that the court's order of August 7th was not to close the bank, but to except from its order 'the ordinary course of business of the bank'—a situation that would have precipitated a run upon it and a depletion of its assets from August 7th until August 13th, when the court's order appointing a receiver was entered. * * *"

Then KORLBY v. SPRINGFIELD INST. FOR SAVINGS, 245

U. S. 330, 62 L. Ed. 326 (1917) was cited. There the Supreme Court speaking through Mr. Justice Clarke said (page 333):

> "From the earliest days of the administration of the National Banking Act to this case attempts have been made in many forms to give to it a technical construction which would so restrict the powers of the Comptroller as to greatly delay and impede the settlement of the affairs of insolvent banks. But this court has uniformly declined to narrow the act by construction, and has placed a liberal interpretation upon its provisions to promote its plain purpose of expeditiously and justly winding up the affairs and paying the debts of such unfortunate institutions. * * *"

Judge Buffington continued in the PORT NEWARK NATIONAL BANK CASE (page 299):

> "* * * Sufficient to say that in the present case we regard the Comptroller at the time this bill was filed as having complete dominion over, and, by his bank examiner, full legal control of, the then and future operations of the bank, and that such situation might ultimately require the appointment of a receiver. Consequently, the court below, when the bill was filed, acquired no jurisdiction to shear the Comptroller of the statutory power to take the further step of appointing a receiver in case insolvency existed and the attempted sale fell through. As the order states the comptroller had on file at that time information of the insolvency of the bank, it is clear he had already complied with the statutory provisions of 'on examination of its affairs,' after which he 'may appoint a receiver.' "

In the instant case, the Insurance Commissioner had complete dominion over the affairs of Penn General Casualty Company at the time the complainant's bill was filed in the Federal court. We do not say that the Court of Common Pleas of Dauphin County had jurisdiction at that time. Nor do we say that such jurisdiction as it obtained upon the filing of the suggestion by the Attorney General dated back to a time prior to the filing of the bill of complaint. We do say that the Insurance Commissioner, having exercised dominion over the company long prior to the application to the district court, had jurisdiction as a statutory officer, with which the district court should not have interfered.

Counsel for the petitioner treat this case as if it involved a dispute between two courts. Because the bill in equity was filed on November 17, 1933 and it was not until December 8, 1933 that the Attorney General proceeded in the state court, they argue that the Federal court first took jurisdiction, and merely because of that fact should continue to hold it.

From our standpoint it is immaterial whether the district court obtained jurisdiction before the state court, granting for the moment that the district court had jurisdiction.

The question is much more far-reaching than that.

We are urging that even if the district court technically had jurisdiction, it ought not to have exercised it, even to the extent of issuing a restraining order.

But in any event it is clear that the district court technically would be obliged to rely upon the establishment of facts averred by the complainant but denied by the respondent, to justify it in appointing receivers or at least in making them permanent. Actually there was no hearing and no evidence before the court upon which it could base the appointment of receivers. And so the court went no farther than to issue its restraining order; but even this was calculated to paralyze the functioning of the state administrative and judicial officers as required by state law.

Using language equally as forceful as that which we have quoted from Federal appellate court decisions, the state courts have repeatedly upheld the systems established by state law for the supervision and liquidation of insurance companies, banks and building and loan associations.

The highest courts of several states have used the writ of prohibition or equivalent remedy to halt any effort of a court of first instance to usurp the powers reserved by statute to administrative officers in such cases.

ABBOTT, COM. OF BANKING, v. MORRIS, JUDGE, 132 S. E. 372 (S. C. A. W. Va. 1926).

GREEN, SUPERINTENDENT OF BANKS, v. SMITH ET AL., 129 So. 92 (S. Ct. Fla., 1930).

STATE OF FLORIDA EX REL. DADE COUNTY SECURITY CO. ET AL. v. BARNS ET AL., 128 So. 860 (S. Ct. Fla., 1930).

STATE OF FLORIDA EX REL. LANDIS, ATTY. GEN. v. CIRCUIT FOR ELEVENTH JUDICIAL CIRCUIT ET AL., 135 So. 866 (S. Ct. Fla., 1931).

STATE OF FLORIDA EX REL. PORTER ET AL. v. ATKINSON, CIRCUIT JUDGE, ET AL., 146 So. 581 (S. Ct. Fla., 1933).

STATE OF MISSOURI EX REL. MISSOURI STATE LIFE INS. CO. v. HALL, JUDGE, ET AL., 52 S. W. (2d) 174 (S. Ct. Mo., 1932).

STATE OF OHIO EX REL. BETTMAN v. COURT OF COMMON PLEAS OF FRANKLIN COUNTY, 178 N. E. 258 (S. Ct. Ohio, 1931).

UNION SAVINGS AND INVESTMENT CO. v. DISTRICT COURT OF SALT LAKE COUNTY, 140 Pac. 221 (S. Ct. Utah, 1914).

Comity between the Federal and state governments demands that the Federal authorities do their utmost to effectuate state policy in matters involving these quasi-public corporations.

And generally speaking this has been the attitude of those circuit courts of appeal which have had an opportunity to express themselves upon a question such as the one here presented.

In LYON v. MCKEEFREY, 171 Fed. 384 (C. C. A. 3rd Cir. 1909), a nonresident creditor of a Pennsylvania bank secured the appointment of Federal receivers, who carried on liquidation to the point where creditors were paid. The state banking official sought an

order on the receivers to turn over the balance of the assets to him. The district court refused such order, but the circuit court of appeals reversed the court below. It held that the state system for the government of banking institutions and insurance companies is such that a Federal court should not interfere with it.

In the course of his opinion, Judge Gray said (page 392):

> "The defendant corporation was a creature of the laws of Pennsylvania, and by those laws the rules governing its existence were prescribed. The measure of control to be exercised over its own corporations was determinable by the law and policy of the state to which they owed their being. By the legislation here in question, the state of Pennsylvania has seen fit to subject such corporations to supervision and administrative control and has ordained the proceedings, partly administrative and partly judicial, by which the life of such corporations may be determined and their affairs wound up and liquidated. The judicial proceeding is not one that may be instituted by private parties, but by the Attorney General of the state, acting on behalf of the commonwealth and in the interest of the public. Such a proceeding is not one of which a United States court can have concurrent jurisdiction. It does not involve a controversy between private parties, whether citizens of the same state or of different states."

In principle, there is absolutely no difference between a case involving a bank or a building and loan association and a case involving an insurance company.

In O'NEIL v. WELCH, 245 Fed. 261 (C. C. A. 3rd Cir. 1917), the court had for consideration Pennsylvania's right to administer the affairs of its insurance companies through the Insurance Commissioner. The Commissioner, through the Attorney General, proceeded in a state court under the state's statute against Union Casualty Insurance Company of Pennsylvania. Thereafter, a nonresident stockholder filed a bill in the district court alleging insolvency and asking for the appointment of a receiver. The defendant company filed a consent answer. One day before the proceeding in the state court came to a head, the district court appointed a receiver. The Attorney General thereupon filed a petition in that court to vacate the appointment. The district court dismissed the petition but on appeal was reversed.

The petitioner in the case at bar takes comfort in certain language used by Judge Woolley, indicating that the jurisdiction of the state court was sustained because that court had acted first. But the Federal court did recognize the rule that state systems of control over quasi-public institutions must be respected. At page 267 Judge Woolley said:

> "The state engaged in this undertaking primarily for the protection of the public. Being for the public, its action is a governmental function. When in its exercise it becomes necessary to protect the public from insolvent or improperly conducted insurance companies, the state pursues a remedy prescribed by the same law that conferred the corporation's rights and defined the state's duties. Given briefly, the Insurance Commissioner, acting through the Attorney General,

files in a State court a suggestion of the corporation's insolvency or unlawful conduct. In this way the State acts and in this way the State begins suit. Upon the State's suggestion the court starts a judicial inquiry by directing to the Insurance Company a rule to show cause why the Insurance Commissioner should not take possession of its property, **and at the same time** (that is at the very beginning of the suit) the court, if it wishes, lays its hand upon the company's property, and by a restraining order holds it within its control pending the inquiry.

"The jurisdiction of the State court thus invoked is a special jurisdiction conferred by statute as a part of the State's policy of insurance regulation and control. It is not conferred for the protection of corporations' policyholders and creditors alone, but for the protection of the public as well. This clearly appears by the terms of the act; it again appears in the court's degree. In prosecuting an insurance company the State is acting for the public, and the public is in turn interested in the proceedings; though not nominally present as a party, it is nevertheless present in the person of the Attorney General."

And Judge Woolley said, at page 268:

"* * * As against stockholders, the law is equally effective. **The law under which an insurance company is incorporated subjects it to State supervision and administrative control, and ordains the proceeding by which its life may be determined and its affairs wound up and liquidated. The rights of such a corporation are therefore subordinate to the rights of the State, and the rights of stockholders are no greater than those of the corpora-**

> **tion.** When, therefore, the statutory proceeding has been begun in a State court and by its commencement jurisdiction has been acquired over the corporation, neither the corporation nor its stockholders, nor its creditors can divest the court of its jurisdiction or deprive the State of its public function by subsequently invoking the aid of a Federal court to remove the corporation's property beyond the reach of the State court and thereby withdraw from the State court the subject matter of the action there pending. If this were not so, every action instituted by the state government against an insurance company might be interrupted and defeated by a non-resident stockholder filing in a Federal court a bill accompanied with the answer of an acquiescing corporation, after action has been begun in the State court and before in its orderly progress the property of the corporation has been physically seized. Thus the policy of the State would be thwarted and its administration overthrown; the State's creature would be more powerful than the State itself. We are satisfied that no such thing was contemplated either in Federal or State policy."

And in MITCHELL v. LAY, 48 F. (2d) 79 (1930), the Circuit Court of Appeals, Ninth Circuit, reversed an order requiring the Insurance Commissioner of California to turn over to a Federal receiver funds of an insolvent insurance company which were in his possession. We have already quoted the language of Judge Wilbur, supra, page 29.

In LILLARD v. LONERGAN, 72 F. (2d) 865 (1934), the Attorney General of Kansas instituted quo warranto proceedings against The Wheat Farming Company for acting beyond its charter powers. The state court

held that while a forfeiture of the charter was justifiable, it would for the present decree only that within a reasonable time the corporation discontinue its illegal activities and dispose of assets not needed for its lawful purposes. The court further decreed that if it should prove impossible for the corporation to limit its activities in this manner, it should then be liquidated and be dissolved. The court went on to say that if these orders were not complied with "the writ of ouster will issue and such further orders as may be necessary and expedient will be made." Thereafter creditors of the company successfully resorted to a Federal court for the appointment of receivers. Thereupon the state court appointed receivers to liquidate the business of the corporation and to dissolve its affairs. These receivers and the Attorney General of Kansas then petitioned the district court to discharge the receivers it had appointed and order them to deliver all of the property of the company to the receivers appointed by the state court. The district court denied the petition. Upon appeal, the Circuit Court of Appeals for the Tenth Circuit reversed the lower court, vacating its decree and directing its receivers to deliver all property in their hands as such receivers to the receivers subsequently appointed by the state court. Judge Lewis said at page 871:

> "The rule as between courts having concurrent jurisdiction over parties and subject matter, when a controversy arises as to which has the better right to possession, has no application here. The proceeding instituted in the state Supreme Court could not have been maintained in the Federal Court, nor the one in the Federal Court in the state Supreme Court. The one in the Federal

> Court was antagonistic to the one in the state court. The bill there sought to stay the hand of the state court, to nullify its probable action and thwart the purpose of the proceeding in that court. * * *"

(Certiorari refused November 12, 1934).

That is the precise case here, except that in the instant case and under the Pennsylvania law applicable an administrative official, and not a court upon the instance of an administrative official, had taken the intermediate action looking to the possible eventual liquidation of the corporation. Here the Insurance Commissioner acted to conserve the company's assets and later through the Attorney General instituted the court proceeding giving him possession of the company's assets for liquidation.

And as in LILLARD v. LONERGAN, the state court, upon the instance of the Attorney General, followed the policy established by state law with respect to the dissolution of a state corporation and its liquidation.

The Federal court should not have attempted to interfere with the administrative and judicial processes established by state law for the dissolution and liquidation of a Pennsylvania insurance company.

It is true that there was no court proceeding prior to that instituted in the district court. Nevertheless, the procedure before the Insurance Commissioner and the Attorney General ultimately leading to a court proceeding has the same character.

The higher Federal courts themselves have sustained the contention of the states and their administrative officials that where a system has been established by the state law for the creation, regulation, supervision and liquidation of insurance companies and banking institutions, that system will not be upset on the application of an individual stockholder or creditor for a Federal receiver.

In harmony with the decisions cited, this court should affirm the judgment of the Supreme Court of Pennsylvania.

IV.

Cases Cited by the Petitioner.

The petitioner in its brief cites a number of cases in support of its contentions in this case.

Certain of these cases have no bearing whatsoever on the issues involved in this case.

In MORRILL v. AMERICAN RESERVE BOND CO., 151 Fed. 305, 313 (1907), Judge Sanborn said, at page 307:

> "* * * The Attorney General [of Missouri] and * * * his associates, speaking for the three officers of the state, say that, as this court has jurisdiction of the subject-matter and of the parties to this suit, they prefer to bring this property to, and and place it in the hands of, this court * * *."

This case did not involve the question whether receivers could be appointed by a Federal court to liqui-

date a quasi-public corporation. If the case had involved this question, it would not have been comparable to the situation in the case at bar because the state statutes of Missouri provided for the liquidation of bonding companies by receivers appointed by state courts.

LEADVILLE COAL CO. v. MCCREERY, 141 U. S. 475, 478 (1891), involved the property of a commercial corporation in the possession of a Federal court receiver at the time dissolution proceedings against the company were instituted in a state court. The Supreme Court upheld the right of the receiver to deal with the assets without regard to the proceedings in the state court.

MITCHELL v. MAURER, 69 F. (2nd) 233 (C. C. A. 9, 1934), involved the attempt by a district court to oust control of California assets of a Delaware insurance company from the California Superintendent of Insurance. The Federal court a few minutes before the state official commenced proceedings in the state court entertained jurisdiction of a bill in equity and appointed receivers. The Circuit Court of Appeals for the Ninth Circuit, contrary to the decisions of other circuit courts, sustained the action of the district court. On appeal to this court this affirmance was reversed (December 3, 1934, U. S. Law Week, Vol. 2, No. 14, 278). This court found that the district court did not have jurisdiction because diversity of citizenship did not exist.

In this case, counsel for the Superintendent of Insurance did not argue before this Court that there is a fundamental distinction between cases involving ordi-

nary corporations, and cases involving quasi-public corporations. And this Court did not discuss the case from that angle.

ELSON v. MORTAGE BLDG. & LOAN ASS'N., 4 F. Supp. 779 (D. C. Pa. 1933), on appeal in the Circuit Court of Appeals for the Third Circuit as COMMONWEALTH OF PENNSYLVANIA v. JOHN G. WILLIAMS ET AL., 72 F. (2d) 509 (1934) is now before this court on writ of certiorari.

O'NEIL v. WELCH, 245 Fed. 261, 265 (1917) we have already discussed, ante pages 39 to 41.

The following cases cited by petitioner involve the appointment by Federal courts of receivers for building and loan associations:

TOWLE v. AMERICAN BLDG. LOAN & INV. SOC., 60 Fed. 131 (C. C. N. D. Ill. 1894).

ALEXANDER v. SOUTHERN HOME BUILDING & LOAN ASS'N., 110 Fed. 267 (C. C. N. D. Ga. 1900).

SOLOMONS v. AMERICAN BUILDING & LOAN ASS'N., 116 Fed. 676 (C. C. N. D. Ga. 1902).

FLINN v. INTERSTATE BUILDING & LOAN ASS'N., 141 Fed. 672 (C. C. D. S. C. 1905).

WILSON v. PARVIN, 119 Fed. 652 (C. C. A. 6, 1903).

UNIVERSAL SAVINGS & TRUST CO. v. STONEBURNER, 113 Fed. 251 (C. C. A. 4, 1902).

It will be noted that the latest of these cases was decided in 1905. That was long before the states had adopted the policy of establishing a system for the organization, supervision, regulation and liquidation of building and loan associations and other quasi-public corporations.

For example in Pennsylvania the Banking Commissioner was for the first time given exclusive power to liquidate building and loan associations by the Act of May 21, 1919, P. L. 209.

In none of these cases was the question considered whether the Federal courts would appoint receivers to liquidate **quasi-public corporations** contrary to the policy of State law providing an exclusive method for this purpose.

With one or two exceptions, to which we later make reference, all the other cases cited by the petitioner, particularly on pages 12 to 15 inclusive of its brief, involve receivership proceedings instituted against ordinary commercial corporations or utility companies for none of which did the state statutes provide a complete and exclusive system of liquidation by a state official.

STRAINE v. BRADFORD SAVINGS BANK & TRUST CO., 88 Fed. 571 was decided in 1898. The decision was on a plea to a bill to compel a set-off of claims of the complainant against claims of a bank which was in the hands of a State receiver.

The court stated that:

> "An institution of this kind may be proceeded against in this way [receivership proceedings in State court] for other causes than insolvency. V. S. §4054. Whether this proceeding is because of insolvency * * * is not set forth in the plea. * * *"

As an authority on the point here involved this case is scarcely worth citing.

FARRELL v. STODDARD, 1 F. (2) 802 (1924) arose in a bill in equity by a person claiming that certain assets in the hands of the Insurance Commissioner of New York, were impressed with a trust. The plaintiff was neither a policy holder nor a creditor of the defunct insurance company. Obviously, the case is readily distinguishable from that now before this Court.

And in SOUTHERN TRUST CO., v. AUSTIN, 30 F. (2) 893 (1929), the trust company involved was organized under the laws of Oklahoma, which apparently did not provide a system of supervision, regulation and liquidation of such companies. At least, the Court's opinion makes no mention of such a system, and the facts of the case indicate that there could not have been such a system. The trust company had turned its affairs over to a Texas land mortgage corporation "to be managed," and was thereafter inactive.

This case cannot be regarded as a precedent relevant to the present argument.

CONCLUSION

The cases of COMMONWEALTH v. JOHN G. WILLIAMS, ET AL., October Term 1934, No. 394, GORDON, SECRETARY OF BANKING v. OMINSKY ET AL., October Term 1934, No. 395, GORDON, SECRETARY OF BANKING v. WASHINGTON, ET AL., October Term 1934, No. 549, and GORDON, SECRETARY OF BANKING v. O'BRIEN, ET AL., October Term 1934, No. 550, are the only decisions of United States Circuit Courts of Appeals refusing to give effect to state laws governing the method of liquidating quasi-public corporations. All of these cases were decided at about the same time. In the two last mentioned, petitions for certiorari to this court are pending. They involve the appointment of receivers to take out of the hands of the Secretary of Banking of Pennsylvania assets of a closed bank.

These decisions reflect a complete change in the attitude of the Circuit Court of Appeals of the Third Circuit on this important subject. In the earlier cases, LYON v. MCKEEFREY, 171 Fed. 384 (1909) and O'NEIL v. WELCH, 245 Fed. 261 (1917), this same court gave strong expression to its belief that Federal Courts should support state systems for the organization, regulation, supervision and liquidation of quasi-public corporations. One case dealt with a bank; the other with an insurance company.

In the following cases, stockholders of quasi-public corporations were held to have no standing to seek relief in a Federal Court, contrary to the provisions of the state law under which the corporations were organized:

MCGARRY v. LENTZ, 13 F. (2d) 51 (1926) C. C. A., Sixth Circuit.

COOK v. ILLINOIS BANKERS' LIFE ASS'N., 46 F. (2d) 782 (1931), C. C. A., Seventh Circuit.

In the following cases, circuit courts of appeal reviewed the exercise of discretion by district courts in appointing receivers for quasi-public corporations or for certain assets of such corporations, and upheld the state authorities in their objection of such receiverships:

MITCHELL v. LAY, 48 F. (2d) 79 (1930), C. C. A., Ninth Circuit. Petition for Certiorari to U. S. Supreme Court denied. 283 U. S. 864 (1931).

BANK OF BAY BISCAYNE v. HANKINS, 42 F. (2d) 209 (1930), C. C. A., Fifth Circuit.

AMOS v. TRUST CO. OF FLORIDA, 54 F. (2d) 286 (1931), C. C. A., Fifth Circuit. Petition for Certiorari to U. S. Supreme Court denied. 285 U. S. 559 (1932).

In the following cases receiverships were set aside even though the bill in equity had been filed before the state officer took possession of the quasi-public corporation's property and assets:

AMOS v. TRUST CO. OF FLORIDA, 54 F. (2d) 286 (1931), C. C. A., Fifth Circuit. Certiorari refused. 285 U. S. 559.

MITCHELL v. LAY, 48 F. (2d) 79 (1930), C. C. A., Ninth Circuit. Certiorari refused. 283 U. S. 864.

In the following cases Federal receivers were required to turn over to the state authorities the assets

of a quasi-public corporation at the instance of the proper state officer. In all of them the district court was reversed:

LYON v. MCKEEFREY, 171 Fed. 384 (1909), C. C. A., Third Circuit, Judge Gray.

MITCHELL v. LAY, 48 F. (2d) 79 (1930), C. C. A., Ninth Circuit. Certiorari refused. 283 U. S. 864.

O'NEIL v. WELCH, 245 Fed. 261 (1917), C. C. A., Third Circuit.

LEE v. EDMUNDS, 66 F. (2d) 122 (1933), C. C. A., Fifth Circuit.

However, in the two cases last cited the Federal receivership was junior to a state receivership.

Thus we find support for our position in the expressions of the Circuit Courts of Appeal of the Second, Third, Fifth, Sixth and Ninth Circuits.

On principle, we submit that the decree of the Supreme Court of Pennsylvania in the present case should be affirmed.

The complainant in the district court is a stockholder of Penn General Casualty Company. He is bound by the laws of Pennsylvania establishing the state's system for the supervision, regulation and liquidation of such companies. He could not have a justiciable controversy with the company regarding its liquidation.

But if such a controversy could exist and diversity of citizenship gave the district court jurisdiction, that court abused its discretion in attempting to interfere when the Insurance Commissioner had actually taken jurisdiction over the company, exercised dominion over its affairs and then later followed the process of liquidation prescribed by state law. The Federal courts should not, in such cases, lend their aid to efforts to frustrate the state's settled policy in regulating and liquidating its quasi-public corporations.

For these reasons we believe that the decree of the court below should be affirmed.

Respectfully submitted,

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APPENDIX

EXCERPTS FROM PENNSYLVANIA ACTS OF ASSEMBLY

The Administrative Code of 1929 (Act of April 9, 1929, P. L. 177, 71 PS Secs. 411, 412).

Section 1501. Powers and Duties in General.—The Insurance Department shall, subject to any inconsistent provisions in this act contained, continue to exercise the powers and perform the duties by law vested in and imposed upon the said department, and the Insurance Commissioner.

Section 1502. Insurance.—The Insurance Department is charged with the execution of the laws of this Commonwealth in relation to insurance.

The Insurance Company Law of 1921 (Act of May 17, 1921, P. L. 682, as amended by the Act of March 10, 1925, P. L. 30, 40 PS Sec. 341, et seq.)

Section 101. Certain Words Defined.—The word "company," as used in this act, shall be construed to include incorporated insurance companies only, whether incorporated under the laws of this Commonwealth, or of any other State, Territory, or district, or under the laws of any foreign country.

Except as used in connection with employers' mutual liability insurance associations, or whether clearly used in its general sense, the word "association," as used in this act, shall be construed to include only individuals, partnerships, or associations of individuals,

authorized to engage in the business of insurance in the Commonwealth as insurers on the Lloyds plan.

The word "exchange," as used in this act, shall be construed to include only individuals, partnerships, and corporations, authorized by the laws of the Commonwealth to exchange with each other inter-insurance or reciprocal insurance contracts.

Wherever used in this act, unless a contrary intention is evident from the context, the singular shall include the plural, and the masculine shall include the feminine and neuter.

Section 102. Short Title.—This act shall be known and may be cited as "The Insurance Company Law of 1921."

Section 107. Individuals, Associations, and Partnerships Prohibited from Doing Insurance Business.—Except as herein provided, the doing of any insurance business in this Commonwealth, as prescribed in this act, for insurance companies, by any private individual, association, or partnership, is prohibited. Any person who solicits or obtains, within this Commonwealth, applications for insurance by any such private individual, association, or partnership, contrary to the provisions of this act, shall be liable to a penalty of one hundred dollars ($100.00), for the use of the Commonwealth, for every application obtained, to be sued for and recovered by the Attorney General or district attorney of the proper county, either by action of debt or criminal prosecution. Any person who has paid to any agent of such unauthorized individual, association, or partnership any premium moneys for insurance

granted or to be granted shall be entitled to recover the same by an action at law from such agent or from the person, association, or partnership for which he acted. This section does not prohibit the doing of insurance business by associations known as Lloyds, nor the exchange of inter-insurance or reciprocal contracts of insurance authorized by this act, nor shall the same prevent any one from becoming and being accepted as personal surety or guarantor.

Section 201. Classes of Insurance Companies.—Subject to the provisions of this act, insurance companies of any of the following classes may be incorporated: (a) Stock Life Insurance Companies; (b) Mutual Life Insurance Companies; (c) Stock Fire, Stock Marine, and Stock Fire and Marine Insurance Companies; (d) Stock Casualty Insurance Companies; and (e) Mutual Insurance Companies of any kind other than mutual life insurance companies.

Section 202. Purposes for Which Companies May Be Incorporated.—* * *

(c) Stock casualty insurance companies may be incorporated for any or all of the following purposes:

(1) Guaranteeing the fidelity of persons holding places of public or private trust; guaranteeing the performance of contracts, other than insurance policies; guaranteeing the performance of insurance contracts, where surety bonds are accepted from insurance companies by States or municipalities in lieu of actual deposits; executing or guaranteeing bonds and undertakings required or permitted in all actions or proceed-

ings or by law allowed; and indemnifying banks, bankers, brokers, financial or moneyed associations, or financial or moneyed corporations, against the loss of any bills of exchange, notes, drafts, acceptances of drafts, bonds, securities, evidences of debt, deeds, mortgages, documents, currency, and money, except against loss caused by marine risks or risks of transportation or navigation. Also guaranteeing any Federal Land Bank against loss by reason of defective title or incumbrances on real property on which any such Federal Land Bank may make a loan secured by a mortgage.

(2) To insure against injury, disablement, or death resulting from traveling or general accident, and against disablement resulting from sickness, and every insurance appertaining thereto, including a funeral benefit to an amount not exceeding one hundred dollars.

(3) To insure glass against breakage.

(4) To insure any one against loss or damage resulting from accident to, or injury, fatal or non-fatal, suffered by, an employe or other person, for which the person insured is liable; or against loss or damage to property caused by horses, or by any vehicle drawn by animal power, for which loss or damage the person insured is liable.

(5) To insure steam boilers, and pipes, flywheels, engines, and machinery connected therewith or operated thereby, against loss caused by explosion or accident; and against loss of or damage to life, person, or

property resulting therefrom; and against loss of use and occupancy caused thereby; and to make inspection of, and issue certificates of inspection upon, such boilers, pipes, flywheels, engines, and machinery.

(6) To insure against loss or burglary or larceny or theft or forgery.

(7) To carry on the business of credit insurance or guaranty, either by agreeing to purchase uncollectible debts or otherwise; and to insure against loss or damage from the failure of persons indebted to the insured to meet their liabilities.

(8) To insure any goods or premises against loss or damage by water, caused by the breakage or leakage of sprinklers, pumps, or other apparatus, erected for extinguishing fires, and of water pipes; and against accidental injury, from causes other than fire or lightning, to such sprinklers, pumps, water pipes, or other apparatus; and against damage from use or occupancy of premises by reason of such breakage or leakage.

(9) To insure against loss or damage to elevators or other property, except loss or damage by fire, caused by the maintenance, operation, or use of elevators and machinery; loss or legal liability for damage to property resulting from such operation, maintenance, or use of elevators.

(10) To insure horses, cattle, and other live stock.

(11) To insure against loss or damage to automobiles and airplanes, seaplanes, dirigibles, or other

aircraft (except loss or damage by fire or while being transported in any conveyance by land or water), including loss by legal liability for damage to property resulting from the maintenance and use of automobiles and airplanes, seaplanes, dirigibles, or other aircraft.

Section 215. Examination of Companies; Certificate To Do Business.—(a) As soon as the entire amount of the authorized capital of a stock insurance company, incorporated under this act, has been paid in, certificates shall be issued therefor to the persons entitled to receive the same, which certificates shall be transferable upon the books of the company; and the president or secretary of the company shall notify the Insurance Commissioner that the entire capital of the company has been paid in, and that it is ready to commence business. Upon receipt of such notice, the Insurance Commissioner shall, in person or by deputy or examiners, examine the company; and, in case he finds that it has complied with the provisions of this act, and is possessed of funds, invested in the manner hereinafter specified, equal to the amount of its capital, he shall issue to said company a certificate showing that it has been organized in accordance with the provisions of this act, and that it has the requisite amount of capital for the transaction of business in the Commonwealth, which certificate shall empower the company to issue policies, and otherwise transact the business of insurance for which it was incorporated.

Section 602. Investment of Capital.—Every domestic stock casualty insurance company shall invest and keep invested in sound income-bearing securities all its capital and funds of every description, excepting

such cash as may be required in the transaction of its business, and such as it may invest in real estate as hereinafter authorized. The capital of every such company shall be invested as follows:

(a) In such real estate as it is authorized by this act to hold.

(b) In bonds of the United States or District of Columbia, or of any State or Territory of the United States or Canada, and in farm loan bonds issued by Federal Land Banks.

(c) In the legally authorized bonds or notes of any city, county, township, municipality, school or water district of this Commonwealth, or of any other State or Territory of the United States or Canada.

(d) In the bonds or notes of any solvent railroad or street railway corporation upon which no default in interest has been made.

(e) In ground-rents and loans upon improved and unencumbered real estate: Provided, That no loan on such real estate shall exceed sixty-six and two-thirds per centum (66 2-3%) of the fair market value thereof at the time of making such loan.

(f) Any such company which has one million dollars of capital and one million dollars of surplus may invest in the capital of any like company organized under the laws of this Commonwealth or of the laws of any of the United States, solely to transact the same class of business in countries outside of the United States. Such investment shall be limited to an amount not exceeding thirty per centum of the par value of the capital stock of the investing company.

Section 603. Investment of Surplus; Restrictions —Any money over and above the capital of any such stock casualty insurance company may be invested in the securities above enumerated, or loaned upon the security of the same; or in the stock or other evidence of indebtedness of any solvent, dividend paying corporation created under the laws of this Commonwealth or of any other State of the United States, or loaned upon the pledge of the same, except its own stock or the stock of any other insurance company transacting like classes of business. The current market value of such securities at the time of any loan thereon shall be at least fifteen per centum (15%) more than the sum loaned thereon. No such insurance company shall invest any of its funds in any unincorporated business or enterprise; nor in the stock or evidence of indebtedness of any corporation the owners or holders of which stock or evidence of indebtedness may, in any event, be or become liable on account thereof to any assessment, except for taxes; nor shall any of its funds be loaned on personal security. Not more than one-fifth (1-5) of its capital shall be invested in a single mortgage. No such company shall enter into any agreement to withhold from sale any of its property; but the disposition of its property shall be at all times within the control of its board of directors or trustees. If any investment or loan is made in a manner not authorized by this act, the officers and directors making or authorizing the same shall be personally liable for any loss occasioned thereby.

Any such stock casualty insurance company may invest in the capital stock and obligations of a corporation or corporations formed for the purpose of

taking and holding title to real estate and erecting or maintaining thereon a building or buildings to be used in whole or in part for the accommodation and transaction of the business of such insurance company without being subject to the limitation hereinbefore prescribed as to investment in the stock of a dividend paying corporation; but no such insurance company shall invest more than fifty per centum (50%) of its capital and surplus in the stock and other obligations of any such corporation or corporations, nor acquire and hold any of the stock or other obligations of any such corporation or corporations, if the total amount of the capital and other obligations of such corporation or corporations exceeds in the aggregate fifty per centum (50%) of the capital and surplus of such insurance company, without the written approval of the Insurance Commissioner.

Section 607. Procedure When Capital Impaired.—Any stock casualty insurance company receiving notice from the Insurance Commissioner that its capital is impaired shall immediately call upon its stockholders for such amounts as will restore its capital to the amount fixed by its charter. In case any stockholder neglects or refuses to pay the amount called for, after notice personally given or by advertisement, at such time and in such manner as the commissioner shall approve, the company shall require the return of the original certificate of stock held by such stockholder, and, in lieu thereof, issue new certificates in the proportion that the ascertained value of the assets of the company may, as determined by the commissioner, bear to the original capital; the company paying for any fractional parts of shares. The directors may

create new stock, and issue certificates therefor, and dispose of the same, at not less than par, for an amount sufficient to make up the original capital, or the commissioner may, in his discretion, permit the company to reduce its capital and the par value of its shares in proportion to the extent of the impairment, but the captial shall at no time be reduced to an amount less than that required by law for the organization of any such company. In fixing such reduced capital, not *more than fifty per centum* (50%) of the original capital shall be deducted from the assets on hand, to be retained as surplus funds; nor shall any part of the assets be distributed to stockholders.

The Insurance Department Act of 1921 (Act of May 17, 1921, P. L. 789, as amended by the Act of April 7, 1927, P. L. 161, the Act of June 22, 1931, P. L. 616, the Act of May 17, 1933, P. L. 798, and the Act of May 24, 1933, P. L. 982, 40 PS Sec. 1, et seq.)

Section 101. Certain Words Defined.—The word "company," as used in this act, shall be construed to include only incorporated insurance companies, and corporations possessing the power to insure owners of real property, mortgagees, and others interested in real property from loss by reason of defective titles, liens, and encumbrances, whether incorporated under the laws of this Commonwealth, or of any other state, territory or district, or under the laws of any foreign country.

Except where otherwise indicated, the word "association," as used in this act, shall be construed to include only individuals, partnerships, or associations of

individuals, authorized to engage in the business of insurance in the Commonwealth as insurers on the Lloyds plan.

The word "exchange," as used in this act, shall be construed to include only individuals, partnerships, and corporations, authorized by the laws of the Commonwealth to exchange with each other inter-insurance or reciprocal insurance contracts.

Section 102. Short Title.—This act shall be known and may be cited as "The Insurance Department Act of one thousand nine hundred and twenty-one."

Section 201. Insurance Department Established.—There is hereby established a department, to be known as the Insurance Department, which is charged with the execution of the laws of this Commonwealth in relation to insurance.

Section 213. Examination of Companies, Et Cetera.—The Insurance Commissioner shall require every domestic insurance company, association, and exchange to keep its books, records, accounts, and vouchers in such manner that he or his authorized representatives may readily verify its annual statements, and ascertain whether the company, association, or exchange has complied with the provisions of law. He shall, every three years, or oftener if he deems it to be necessary, personally or by his deputy, actuary, or examiners, visit each domestic insurance company, association, and exchange, and thoroughly inspect and examine its affairs to ascertain its financial condition and its ability to fulfill its obligations, whether it has complied

with the provisions of law, and any other facts relating to its business methods and management, and the equity of its plans and its dealings with its policyholders. He may, in like manner, when he determines it to be prudent for the protection of policyholders in this Commonwealth, compel the attendance of officers, or visit and examine, in person or by his deputy or examiners, any insurance company, association, or exchange of another State or foreign government applying for admission or already admitted to do business in this Commonwealth.

In lieu of such examination, the Insurance Commissioner may accept the report of examination made by or upon the authority of the supervising official of any other State.

The Insurance Commissioner shall grant a hearing to the corporation or other insurer or organization examined before filing such report, and may withhold any such report from public inspection for such time as he may deem proper, and may, if he deems it for the interest of the public to do so, publish any such report or the results of any such examination as contained therein in one or more newspapers of the State.

Section 214. Examination of Certain Corporations. —The Insurance Commissioner may examine into the affairs of any corporation, organized under any law of this Commonwealth, or the laws of any other State, or having an office or transacting business in this Commonwealth, which is engaged in, or is claiming or advertising that it is engaged in, organizing or receiving subscriptions for or disposing of stocks of, or in any manner aiding or taking part in the formation or in

the business of, an insurance company, association, or exchange, either as agent or otherwise, or which is holding the capital stock of one or more insurance companies for the purpose of controlling the management thereof as voting trustees or otherwise.

Section 216. Powers with Regard to Examinations. —For the purpose of any such examinations, the Insurance Commissioner, his deputy or his examiners, shall have free access to all the books and papers of any such company, association, exchange, bureau, or corporation which relate to its business, and to the books and papers kept by any of its agents, and may summon, and administer the oath to, and examine as witnesses, the directors, officers, agents, and trustees of any such company, association, exchange, bureau, or corporation, and any other person, relative to its affairs, transactions, and condition. He shall publish the result of his examination of the affairs of any company, association, exchange, or bureau, whenever he deems it for the interest of the policyholders so to do. All the expenses incurred in and about the examination of companies, associations, exchanges, bureaus, or corporations, including compensation of the deputies, examiners, and other employes of the department assisting in said examination, shall be charged to, and paid by, the company, association, exchange, bureau, or corporation examined, in equitable proportions, at such times and in such manner, as the commissioner shall, by general rule or regulation, prescribe.

Section 302. Notice of Impairment of Funds.— Whenever any life insurance company doing business

in this Commonwealth has not on hand the net value, as above defined, of all policies in force, after all other debts and claims against it, including fifty per centum of capital, have been provided for, the Insurance Commissioner shall notify such company and its agents to issue no new policies until its funds become equal to its liabilities.

Section 310. Computation of Unearned Premium Liability.—In determining the liabilities upon its contracts of insurance of any insurance company, other than life insurance companies, and the amount such company should hold as an unearned premium liability, the Insurance Commissioner shall, for casualty insurance, charge one-half of the premium on all annual policies written within one year, and, on policies written for more than one year, he shall charge one-half of the current year's premiums, plus the whole of the premiums for subsequent years. For fire insurance, he shall charge fifty per centum of the premiums written in their policies upon all unexpired risks that have one year or less than one year to run, and a pro rata of all premiums on risks having more than one year to run; on perpetual insurance, he shall charge the cash deposit received, less a surrender charge of not exceeding ten per centum thereof. For marine and inland insurance, he shall charge fifty per centum of the premium written in the policy upon yearly risks and upon risks covering more than one passage not terminated, and the full amount of the premium written in the policy upon all other marine and inland risks not terminated.

Section 311. Computation of Reserve Against Unpaid Losses in Casualty Insurance.—The Insurance Commissioner shall, in calculating the reserve against unpaid losses of casualty companies, other than losses under liability and workmen's compensation policies, set down, by careful estimate in each case, the loss likely to be incurred against every claim presented or that may be presented in pursuance of notice from the insured of the occurrence of an event that may result in a loss. The sum of the items so estimated shall be the total amount of the reserve, except that, in credit insurance, fifty per centum of the premiums on all credit policies expiring in the months of October, November, and December of the current year, less the amount of losses paid on such policies, shall, in addition thereto, be charged in the loss reserve.

Section 321. Notice of Impairment of Funds.—Having charged as a liability the reinsurance and loss reserves as above defined for insurance companies and exchanges of this Commonwealth other than life insurance companies, and adding thereto all other debts and claims against the company or exchange, the commissioner shall, in case he finds the capital or reserve of the company or exchange impaired twenty per centum, give notice to the company or exchange to make good the capital or reserve within sixty days.

Section 501. Suspension of Business of Insurance Companies, Et Cetera, by Insurance Commissioner.—The Insurance Commissioner shall suspend the entire business of any domestic insurance company, association, or exchange, fraternal benefit society or beneficial

society, and the business within this Commonwealth of any insurance company, association, or exchange, or fraternal benefit society or beneficial society of another State or foreign government during its non-compliance with any provision of law obligatory upon it, or whenever he shall find that its assets are insufficient to justify its continuance in business, by suspending or revoking its certificate of authority granted by him. If such insurance company, association, or exchange, fraternal benefit society or beneficial society was incorporated, organized, or is operating without authority of law, the commissioner shall have equal authority to suspend or dissolve as if a certificate of authority had been granted by law. If upon examination or other evidence exhibited to him, the Insurance Commissioner is of opinion that any insurance company, association, or exchange, or fraternal benefit society or beneficial society, or an officer or agent thereof, has violated any provision of the insurance laws, he shall report the facts to the Attorney General, who, under the direction of the Insurance Commissioner, shall take such legal action as the case may require.

Section 502. Applications to Court To Take Over Business of Companies, Et Cetera, for Protection of Policyholders, Creditors, Et Cetera.—Whenever any domestic insurance company, association, exchange, society, or order, including all corporations, associations, societies, and orders which are subject to examination by the Insurance Commissioner or which are doing, or attempting to do, or representing that they are doing, the business of insurance in this Commonwealth, or which are in process of organization

intending to do such business therein—(a) is insolvent; or (b) has refused to submit its books, papers, accounts, or affairs to the reasonable inspection of the Insurance Commissioner or his deputy or examiner; or (c) has neglected or refused to observe an order of the Insurance Commissioner to make good within the time prescribed by law any deficiency, whenever its capital, if it be a stock company, or its reserves, if it be a mutual company, an association, exchange, society, or order, shall have become impaired; or (d) has, by contract of reinsurance or otherwise, transferred or attempted to transfer substantially its entire property or business, or entering into any transaction the effect of which is to merge substantially its entire property or business in the property or business of any other company, association, exchange, society, or order, without having first obtained the written approval of the Insurance Commissioner; or (e) is found, after an examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its creditors, or to the public; or (f) has wilfully violated its charter or any law of the Commonwealth; or (g) whenever any officer thereof has refused to be examined under oath touching its affairs, the Insurance Commissioner shall communicate the facts to the Attorney General, who shall, after hearing, apply to the court of common pleas of Dauphin County, or to the court of any county in which the principal office of such company, association, exchange, society, or order is located, for an order directing such company, association, exchange, society, or order to show cause why its business should not be closed, and the Insurance Commissioner should not take possession

of its property and conduct its business, and for such other relief as the nature of the case and the interests of its policyholders, creditors, stockholders, or the public may require.

Section 503. Non-payment of Judgments by Mutual Companies; Assessment of Policyholders; Dissolution. —Whenever proof shall be submitted to the Insurance Commissioner showing that any execution against any mutual insurance company of this State, in pursuance of judgment obtained against said company in any court of record of this Commonwealth, has been returned nulla bona by the sheriff of the county in which said company is located, it shall be his duty to notify the Attorney General, who thereupon shall apply to the court of common pleas of Dauphin County, or to a judge thereof in vacation, for an order upon such company to show cause why its business should not be closed. Upon the hearing of such rule or order, the court or judge aforesaid shall direct the officers of said company to assess and collect from the policyholders thereof a sum sufficient to satisfy said judgment and execution and all other claims against said company, or make any other order or orders in the premises as may appear to said court or judge just and necessary. In case it shall finally appear to said court or judge that the company aforesaid cannot collect from its members sufficient funds to satisfy the claims against it, the said company shall be adjudged insolvent, and the court or judge aforesaid shall decree its dissolution, and appoint the Insurance Commissioner as receiver to take charge of its effects with like powers as hereinafter provided.

Section 504. Service of Process.—The order to show cause, and the papers upon which the same is made in any proceeding instituted under the provisions of this act, shall be served upon the company, association, exchange, society, or order named in such order in the manner prescribed for personal service of summons upon a domestic corporation by the laws of this Commonwealth. When it is satisfactorily proved by affidavit that the officers of the company, association, exchange, society, or order named in the said order to show cause, upon whom service is required to be made as above, provided, shall have departed from the State, or keep themselves concealed therein with intent to avoid service, such order to show cause may provide for service thereof in such manner as the court or judge by whom the same is made shall direct.

Section 505. Injunction; Return of Order to Show Cause and Decrees Thereon.—On such application, or at any time thereafter, such court may, in its discretion, issue an injunction restraining such company, association, exchange, society, or order from the transaction of its business or disposition of its property until the further order of the court. On the return of such order to show cause, and after a full hearing before the court or before an examiner appointed by the court, the court shall either deny the application or direct the Insurance Commissioner forthwith to take possession of the property and conduct the business of such company, association, exchange, society, or order, and retain such possession and conduct such business until, on the application either of the commissioner, through the Attorney General, or of such company, association, exchange, society, or order, it

shall, after a like hearing, appear to the court that the grounds for such order directing the Insurance Commissioner to take possession has been removed, and that the company, association, exchange, society, or order can properly resume possession of its property and the conduct of its business.

Section 506. Orders for Liquidation of Affairs of Companies, Et Cetera; Insurance Commissioner To Act as Receiver.—If, on a like application and order to show cause, and after a full hearing, the court shall order the liquidation of the business of such company, association, exchange, society, or order, such liquidation shall be made by and under the direction of the Insurance Commissioner, who shall be vested by operation of law with title to all of the property, contracts, and rights of action of such company, association, exchange, society, or order as of the date of the order so directing him to liquidate. The filing or recording of such order in any record office of the State shall impart the same notice that a deed, bill of sale, or other evidence of title, duly filed or recorded by such company, association, exchange, society, or order, would have imparted. The order of liquidation shall, unless otherwise directed by the court, provide that the dissolution of the company, association, exchange, society, or order shall take effect upon the entry of such order in the office of the clerk of the county wherein such company, association, exchange, society, or order had its principal office for the transaction of business.

Section 507. Insurance Commissioner to Supersede Other Receivers.—Whenever a receiver of an insurance company, association, exchange, society, or

order is appointed by any court of this Commonwealth, on motion of the Attorney General at the instance of the Insurance Commissioner, such receiver shall forthwith supersede any receiver previously appointed by the decree of any court of this Commonwealth, and shall likewise supersede any assignee or trustee previously appointed by such insurance company, association, exchange, society, or order.

Section 508. Superseded Receivers, Et Cetera, To Deliver Over Property and File Accounts.—Such superseded receiver, assignee, or trustee shall forthwith pay over and deliver all moneys, securities, assets, and property of such insurance company, association, exchange, society, or order in his or their custody, possession, or control to the receiver appointed as aforesaid on motion of the Attorney General, and shall likewise file his or their account in the court having jurisdiction of such superseded receiver, assignee, or trustee, which court shall allow credit for compensative counsel fees and expenses and for disbursements which shall have been properly earned, incurred, or made, prior to the appointment of the receiver made on motion of the Attorney General as aforesaid.

Section 509. Appointment of Special Deputies To Conduct Business or Liquidate Affairs of Companies, Et Cetera; Special Counsel; Compensation; Power to Administer Oaths and Subpoena Witnesses.—For the purposes of conducting the business or liquidating the affairs of such company, association, exchange, society, or order, the Insurance Commissioner shall have power to appoint, under his hand and official seal, one or more special deputy commissioners as his agent or

agents, and to employ such clerks and assistants as may by him be deemed necessary, and give each of such persons such powers to assist him as he may consider wise. The Attorney General shall appoint the attorneys or counsel necessary to advise the Insurance Commissioner or his deputies in each particular case. The compensation of such special deputy commissioners, counsel, clerks, and assistants, and all expenses of taking possession of and conducting the business or liquidating any such company, association, exchange, society, or order, shall be fixed by the commissioner, subject to the approval of the court, and shall on certificate of the commissioner, be paid out of the funds or assets of such company, association, exchange, society, or order. During the progress of any proceedings taken under this section, the commissioner, his deputies, or any examiner authorized by him, and the special deputy commissioner acting for the said commissioner therein, shall have all of the powers given to the commissioner, his deputy, or any examiner authorized by him, by the laws of this Commonwealth, including the power to examine under oath the officers and agents of such company, association, exchange, society, or order, and all persons deemed to have material information regarding the property or business of the company, association, exchange, society, or order, and to compel the production of all books and papers.

Section 510. Report of Insurance Commissioner as Receiver; Procedure Thereon.—When the Insurance Commissioner has, in pursuance of the provisions of this act, liquidated any company, association, exchange, society, or order, he shall, as soon as the assets

thereof have been converted into money, file a complete account in the court of common pleas of the county in which the proceedings were instituted, showing: (a) All deposits and assets of said company, association, exchange, society, or order; (b) all the moneys paid to him on account of the same; (c) all exceptions filed to any claims or accounts; (d) all payments made or contracted for by him; and (e) the scheme of distribution to creditors, policyholders, or stockholders. Such account shall be proceeded with and passed upon as other accounts are passed upon in said court. If exceptions to the account have been filed with the Insurance Commissioner, they shall have the same force and effect as if filed in the court. Upon confirmation of said account, if no exceptions be filed thereto, or upon the final disposition of exceptions thereto by the court, the Insurance Commissioner shall distribute the money as shown by said account or as decreed by the court, and, upon the complete distribution of all assets of said company, association, exchange, society, or order, he shall report the fact of said distribution to the court.

Section 511. Liquidation of Title Insurance Companies Partially under Supervision of Department of Banking.—The Insurance Commissioner may be appointed, in accordance with the provisions of this article, as liquidator of the title insurance business of any company which also has the power to transact any class of business under the supervision of the Department of Banking. The Insurance Commissioner shall promptly notify the Department of Banking of his appointment as liquidator of any such company.

Upon receipt of notice from the Secretary of Bank-

ing that, as receiver, he has taken possession of any such company, the Attorney General may procure the appointment of the Insurance Commissioner as liquidator of the title insurance business of such company in accordance with the provisions of this article.